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MEMORANDUM FOR: [ ] Executive Assistant/DS&T  
[ ] Special Assistant for  
Imagery/DI

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FROM: [ ] Legislation Division  
Office of Congressional Affairs

SUBJECT: Commercial Space Launch Act Amendments of  
1988, H.R. 4399

1. The subcommittee on Space Science and Applications of the House Committee on Science, Space and Technology recently reported out the above-captioned bill. This bill, formerly H.R. 3765, seems to take care of most, if not all, of the problems you pointed out.

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2. I shall keep you apprised of the bill's progress through the Congress. Should you have any questions, please telephone me [ ]

Attachment

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OCA/LEG/OCA/LEG, [ ] (10 May 1988)

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100TH CONGRESS  
2D SESSION

# H. R. 4399

To facilitate commercial access to space, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 1988

Mr. NELSON of Florida (for himself, Mr. ROE, Mr. LUJAN, Mr. WALKER, Mr. BROWN of California, Mr. PACKARD, Mr. VOLKMER, Mr. SMITH of New Hampshire, Mr. MINETA, Mr. SLAUGHTER of Virginia, Mr. TORRICELLI, Mr. KONNYU, Mr. TRAFICANT, Mr. BUECHNER, Mr. CHAPMAN, Mr. HEFLEY, Mr. PERKINS, Mrs. MORELLA, Mr. McMILLEN of Maryland, Mr. LEWIS of Florida, Mr. NAGLE, Mr. HAYES of Louisiana, Mr. HALL of Texas, Mr. MACKEY, Mr. SKAGGS, Mr. NOWAK, Mr. LAGOMARSINO, Mr. SENSENBRENNER, Mrs. LLOYD, and Mr. SCHEUER), introduced the following bill; which was referred to the Committee on Science, Space, and Technology

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## A BILL

To facilitate commercial access to space, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE; FINDINGS.

4 (a) This Act may be cited as the "Commercial Space  
5 Launch Act Amendments of 1988".

6 (b) The Congress finds that—

7 (1) a United States commercial space launch in-  
8 dustry is an essential component of national efforts to

1 assure access to space for Government and commercial  
2 users;

3 (2) the Federal Government should encourage, fa-  
4 cilitate, and promote the use of the United States com-  
5 mercial space launch industry in order to continue  
6 United States aerospace preeminence;

7 (3) the United States commercial space launch in-  
8 dustry must be competitive in the international market-  
9 place;

10 (4) Federal Government policies should recognize  
11 the responsibility of the United States under interna-  
12 tional treaty for activities conducted by United States  
13 citizens in space; and

14 (5) the United States must maintain a competitive  
15 edge in international commercial space transportation  
16 by ensuring continued research in launch vehicle com-  
17 ponent technology and development.

18 **SEC. 2. DEFINITION.**

19 Section 4 of the Commercial Space Launch Act (49  
20 U.S.C. App. 2603) is amended—

21 (1) at the end of paragraph (10), by striking  
22 “and”;

23 (2) by redesignating paragraph (11) as paragraph  
24 (12); and

1           (3) by inserting after paragraph (10) the following  
2           new paragraph:

3           “(11) ‘third party’ means any person or entity  
4           other than—

5                   “(A) the United States, its agencies, its per-  
6                   sonnel involved in launch services, or its contrac-  
7                   tors or subcontractors involved in launch services;

8                   “(B) the licensee;

9                   “(C) the licensee’s contractors, subcontrac-  
10                  tors, or customers involved in launch services; or

11                  “(D) any such customer’s contractors or sub-  
12                  contractors involved in launch services; and”.

13   **SEC. 3. DEFINITION OF DIRECT COSTS.**

14           (a) Section 15(b)(1) of the Commercial Space Launch  
15   Act (49 U.S.C. App. 2614(b)) is amended by inserting at the  
16   end the following: “For purposes of this paragraph, the term  
17   ‘direct costs’ means the actual costs that can be unambig-  
18   uously associated with a commercial launch effort, and would  
19   not be borne by the United States Government in the ab-  
20   sence of a commercial launch effort.”.

21           (b) Section 15(a) of the Commercial Space Launch Act  
22   (49 U.S.C. App. 2614(a)) is amended by adding at the end  
23   the following new sentence: “In taking such actions, the Sec-  
24   retary shall take into account the commercial availability on

1 reasonable terms and conditions of substantially equivalent  
2 launch property or launch services from a domestic source.”.

3 (c) Section 15 of the Commercial Space Launch Act (49  
4 U.S.C. App. 2614) is amended by adding at the end the fol-  
5 lowing new subsection:

6 “(d) For the purposes of this section, launch services  
7 shall include activities involved in the preparation or produc-  
8 tion of a launch vehicle and its payload for launch and the  
9 conduct of a launch.”.

10 **SEC. 4. INSURANCE REQUIREMENTS OF LICENSEE.**

11 (a) Section 16 of the Commercial Space Launch Act (49  
12 U.S.C. App. 2615) is amended by striking “SEC. 16.” and all  
13 that follows through “other appropriate agencies.” and in-  
14 serting in lieu thereof the following:

15 “SEC. 16. (a)(1)(A) Each license issued or transferred  
16 under this Act shall require the licensee—

17 “(i) to obtain liability insurance; or

18 “(ii) to demonstrate financial responsibility

19 in an amount sufficient to compensate the maximum probable  
20 loss, as determined by the Secretary, from claims by a third  
21 party for death, bodily injury, or loss of or damage to proper-  
22 ty resulting from activities carried out under the license. In  
23 no event shall a licensee be required to obtain liability insur-  
24 ance or demonstrate financial responsibility under this sub-  
25 paragraph in an amount which exceeds either \$500,000,000

1 or the maximum liability insurance available on the world  
2 market at a reasonable cost, whichever is less.

3 “(B) Each license issued or transferred under this Act  
4 shall require the licensee—

5 “(i) to obtain insurance; or

6 “(ii) to demonstrate financial responsibility  
7 in an amount sufficient to compensate the maximum probable  
8 loss, as determined by the Secretary, from claims against any  
9 party by the United States for loss of or damage to property  
10 of the United States resulting from activities carried out  
11 under the license. In no event shall a licensee be required to  
12 obtain insurance or demonstrate financial responsibility under  
13 this subparagraph in an amount which exceeds either  
14 \$100,000,000 or the maximum insurance available on the  
15 world market at a reasonable cost, whichever is less.

16 “(C) Each license issued or transferred under this Act  
17 shall require the licensee to enter into reciprocal waivers of  
18 claims with its contractors, subcontractors, and customers,  
19 and the contractors and subcontractors of such customers,  
20 involved in launch services, under which each party agrees to  
21 be responsible for any damage it sustains or for any injury to  
22 its own employees resulting from activities carried out under  
23 the license.

24 “(D) The Secretary, on behalf of the United States, its  
25 agencies, personnel involved in launch services, and contrac-

1 tors and subcontractors involved in launch services, shall  
2 enter into reciprocal waivers of claims with the licensee, its  
3 contractors, subcontractors, and customers, and the contrac-  
4 tors and subcontractors of such customers, involved in launch  
5 services, under which each party agrees to be responsible for  
6 any damage it sustains or for any injury to its own employees  
7 resulting from activities carried out under the license. Any  
8 such waiver shall apply only to the extent that claims exceed  
9 insurance or self-insurance pursuant to subparagraph (B),  
10 unless any such claim involves the willful misconduct or reck-  
11 less disregard of the United States, in which case the United  
12 States shall waive its right to recover any damages under  
13 subparagraph (B).

14       “(2) Any insurance policy obtained or demonstration of  
15 financial responsibility made pursuant to a requirement de-  
16 scribed in paragraph (1) shall protect the United States, its  
17 agencies, personnel, contractors, and subcontractors, and all  
18 contractors, subcontractors, and customers of the licensee,  
19 and all contractors and subcontractors of such customers, in-  
20 volved in providing the launch services, to the extent of their  
21 potential liabilities, at no cost to the United States.

22       “(3) The Secretary shall determine the maximum proba-  
23 ble loss associated with activities under a license within 90  
24 days after a licensee has requested such a determination and  
25 has submitted all information the Secretary requires to make

1 such a determination. The Secretary shall amend such deter-  
2 mination as warranted by new information.

3       “(4) The Secretary shall, within 3 years after the date  
4 of the enactment of the Commercial Space Launch Act  
5 Amendments of 1988, and once every year thereafter, review  
6 the amounts specified in the last sentence of subparagraphs  
7 (A) and (B) of paragraph (1), and shall submit a report to the  
8 Congress which contains a proposed adjustment to such  
9 amounts to conform with altered liability expectations and  
10 worldwide availability of insurance. Such proposed adjust-  
11 ment shall take effect 30 days after the submission of such  
12 report.

13       “(b)(1) The Secretary shall provide for the payment of  
14 successful claims (including reasonable expenses of litigation  
15 or settlement) by a third party against the licensee, or its  
16 contractors, subcontractors, or customers, or the contractors  
17 or subcontractors of such customers, resulting from activities  
18 carried out pursuant to a license issued or transferred under  
19 this Act for death, bodily injury, or loss of or damage to  
20 property, but only to the extent that such claims are not  
21 compensated by insurance, including self-insurance pursuant  
22 to subsection (a)(1)(A)(ii). This paragraph shall not apply to  
23 claims resulting from the willful misconduct of such parties.

24       “(2) Payment of claims under paragraph (1) shall be  
25 subject to—



1           “(A) notice to the United States of any claim or  
2           suit against a party described in paragraph (1) for  
3           death, bodily injury, or loss of or damage to property;  
4           and

5           “(B) control of or assistance in the defense by the  
6           United States, at its election, of that claim or suit.

7           “(3) The Secretary may withhold payment under para-  
8           graph (1) if the Secretary certifies that the amount is not just  
9           and reasonable, except that the amount of any claim deter-  
10          mined by the final judgment of a court of competent jurisdic-  
11          tion shall be deemed by the Secretary to be just and reasona-  
12          ble.

13          “(4) Claims under paragraph (1) shall be deemed to be  
14          claims against the United States, and the Secretary shall pay  
15          such claims under section 1304 of title 31, United States  
16          Code.”.

17          (b) Section 15(c) of the Commercial Space Launch Act  
18          (49 U.S.C. App. 2614(c)) is amended to read as follows:

19          “(c) The Secretary may establish requirements for proof  
20          of financial responsibility and such other assurances as may  
21          be necessary to protect the United States and its agencies  
22          and personnel from liability, loss, or injury as a result of a  
23          launch or operation of a launch site involving Government  
24          facilities or personnel. The Secretary may not under this sub-  
25          section relieve the United States of liability for damage or

1 injury resulting from the reckless disregard or willful miscon-  
2 duct of the United States or its agents.”.

3 **SEC. 5. UNITED STATES LAUNCH INCENTIVES FOR CERTAIN**  
4 **SATELLITES.**

5 (a) The requirements of section 16(a)(1)(B) of the Com-  
6 mercial Space Launch Act shall not apply to eligible satel-  
7 lites.

8 (b) The United States shall not require payment from  
9 the licensee or customer of the licensee for the provision of  
10 launch property, launch services, or launch sites required in  
11 connection with the commercial launch of an eligible satellite.

12 (c) A satellite shall be eligible for the purposes of this  
13 section if—

14 (1) it was under construction on August 15, 1986;

15 (2) an unperformed launch services agreement or  
16 contract with the National Aeronautics and Space Ad-  
17 ministration was held with respect to it on August 15,  
18 1986; and

19 (3) it is licensed for launch under the Commercial  
20 Space Launch Act.

21 **SEC. 6. PREEMPTION OF SATELLITES.**

22 Section 15(b) of the Commercial Space Launch Act (49  
23 U.S.C. App. 2614(b)) is amended by adding at the end the  
24 following new paragraph:

1       “(4)(A) The Secretary of Transportation, with the coop-  
2       eration of the Secretary of Defense and the Administrator of  
3       the National Aeronautics and Space Administration, shall  
4       take steps to ensure that the launches of satellites with re-  
5       spect to which a launch date commitment from the United  
6       States has been obtained for a launch licensed under this Act  
7       are not preempted from access to United States launch sites  
8       or property except in cases of imperative national need. Any  
9       determination of imperative national need shall be made by  
10      the Secretary of the Air Force or the Administrator of the  
11      National Aeronautics and Space Administration and shall not  
12      be delegated.

13      “(B) The Secretary of the Air Force or the Administra-  
14      tor of the National Aeronautics and Space Administration, as  
15      the case may be, shall report to the Congress within 7 days  
16      after any determination of imperative national need under  
17      subparagraph (A), including a full explanation of the circum-  
18      stances justifying such determination and a schedule for en-  
19      suring the prompt launching of a preempted satellite.”.

20      **SEC. 7. STUDY OF PROCESS FOR SCHEDULING LAUNCHES.**

21      The Secretary of Transportation, in cooperation with  
22      the Secretary of Defense and the Administrator of the Na-  
23      tional Aeronautics and Space Administration, and in consul-  
24      tation with representatives of the space launch and satellite  
25      industry, shall study ways and means of scheduling Govern-

1 ment and commercial payloads on commercial launch vehi-  
2 cles at government launch sites in a manner which—

3 (1) optimizes the use of the launch property of the  
4 United States; and

5 (2) assures that the launch property of the United  
6 States that is available for commercial use will be  
7 available on a commercially reasonable basis,  
8 consistent with the objectives of the Commercial Space  
9 Launch Act. The Secretary shall submit the results of such  
10 study to the Congress within 120 days after the date of the  
11 enactment of this Act.

12 **SEC. 8. COMMERCIAL SPACE LAUNCH SERVICE COMPETITION.**

13 It is the sense of the Congress that the United States  
14 should explore ways and means of developing a dialogue with  
15 appropriate foreign government representatives to seek the  
16 development of guidelines for access to launch services by  
17 satellite builders and users in a manner that assures the con-  
18 duct of reasonable and fair international competition in com-  
19 mercial space activities.

20 **SEC. 9. LAUNCH VEHICLE RESEARCH AND DEVELOPMENT.**

21 The Administrator of the National Aeronautics and  
22 Space Administration, in consultation with representatives of  
23 the space launch and satellite industry, as appropriate, shall  
24 support research into launch systems component technol-  
25 ogies, for the purpose of developing higher performance and

1 lower cost United States launch vehicle technologies and sys-  
2 tems available for the launch of commercial and Government  
3 spacecraft into orbit. The Administrator shall submit a report  
4 outlining such activities to the Congress within 120 days  
5 after the date of the enactment of this Act.

6 **SEC. 10. APPLICABILITY TO LICENSES.**

7 This Act, and the amendments made by this Act, shall  
8 apply to all licenses issued under the Commercial Space  
9 Launch Act before or after the date of the enactment of this  
10 Act.

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